

CWP No.25223 of 2013

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.25223 of 2013
Date of decision:30.10.2015**

Rita Kapila and others ...Petitioners
Versus
Financial Commissioner (Social Security), Punjab & ors. ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. A.S.Gill, Advocate,
for the petitioners.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. Gagneshwar Walia, Advocate,
for respondents No.6 & 7.

Mr. R.S.Ahluwalia, Advocate, for
Mr. B.S.Mann, Advocate, for respondent No.62.

Mr. G.S.Nagra, Advocate.

Rakesh Kumar Jain, J.

The petitioners filed 8 partition applications before the Assistant Collector 1st Grade, Dasuya, for partition of land measuring 405 Kanal 08 Marlas, situated in village Dalla, Tehsil Dasuya, District Hoshiarpur. The mode of partition was sanctioned by the Assistant Collector 1st Grade, Dasuya on 19.04.1991. Thereafter, when the mode of partition was amended on 27.05.1993, it was challenged by Anil Kumar and

CWP No.25223 of 2013

[2]

others in CWP No.17937 of 1998. The said writ petition was disposed of on 14.08.2000, directing that the property in dispute shall be partitioned according to the mode of partition settled vide order dated 19.04.1991. The Assistant Collector 1st Grade, Dasuya passed the final order of partition on 09.08.2002, which was challenged by way of 9 appeals before the Collector, Dasuya. The appeals were allowed on 31.10.2003 and the cases were remanded back to the Assistant Collector 1st Grade with an order to prepare a separate Kurra of respondent No.62 on the basis of his possession and as per mode of partition dated 19.04.1991. This order was challenged by Krishna Syal and Savitri Syal in appeal before the Commissioner, Jalandhar Division, Jalandhar, which was dismissed on 31.03.2005 and the revision preferred before the Financial Commissioner by them was dismissed on 29.12.2006. Thereafter, the Assistant Collector 1st Grade, Dasuya re-started the partition proceedings and issued notices to all the parties for 01.05.2007.

The case set up by the petitioners is that petitioner No.1 along with her husband was in Canada from 15.04.2007 to 27.07.2007 and was not served with the summons. Visas and air tickets of petitioner No.1 and her husband, to show that they were in Canada from 15.04.2007 to 27.07.2007, are also made part of the record along with report of the Process Server for 01.05.2007. It is further alleged that petitioner No.2 is an old lady of 72 years of age has shifted to 6-Green Model Town, Jalandhar since October, 2006 and is permanently residing at Mumbai with her daughter and petitioner No.3 is residing at Ludhiana. No notice was served to them or through their attorney for 01.05.2007 and on the basis of false and

CWP No.25223 of 2013

[3]

fabricated report obtained on summons, the Assistant Collector 1st Grade passed the order for service through munadi/proclamation for 11.05.2007. The said munadi was also conducted in village Dalla on 11.05.2007, whereas none of the petitioners was residing at village Dalla, rather petitioner No.1 was in Canada from 15.04.2007 to 27.07.2007 and petitioners No.2 and 3 were residing at Mumbai and Ludhiana respectively.

The case of the petitioners is that the Assistant Collector 1st Grade proceeded against *ex-parte* on 11.05.2007 and ordered partition of the land. The said order was unsuccessfully challenged by the petitioners in appeal before the Collector as their appeal was dismissed on 25.07.2008 and revision was dismissed by the Commissioner, Jalandhar Division, Jalandhar on 08.10.2008. The revision petition was dismissed by the Financial Commissioner on 23.11.2012 and hence, the present petition has been filed in order to challenge the orders dated 11.05.2007, 25.07.2008, 08.10.2008 and 23.11.2012.

Counsel for the petitioners has submitted that the petitioners were illegally proceeded against *ex-parte* vide order dated 11.05.2007. In this regard, he has referred to the order dated 01.05.2007 by which the petitioners were sought to be served by way of proclamation for 11.05.2007. There is a report on record dated 09.05.2007 of proclamation in the village by Kuldeep Rai S/o Ram Lubhaya but there is no evidence that the petitioners were served personally rather the petitioners have placed on record the evidence showing that petitioner No.1 was out of the country and petitioners No.2 and 3 were in Mumbai and Ludhiana respectively and

CWP No.25223 of 2013

[4]

notices were not even served upon their power of attorney.

Counsel for the petitioners has argued that as per Section 20 of the Punjab Land Revenue Act, 1887, it is necessary to serve the party in person at the first instance and the proclamation is the last resort.

On the other hand, counsel for the respondents has submitted that the petitioners were duly served by proclamation and they did not deliberately appear before the Assistant Collector 1st Grade.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the *ex-parte* proceedings carried out by the Assistant Collector 1st Grade against the petitioners on the basis of the report of service conducted through proclamation is not just and fair especially when the petitioners have been contesting this litigation tooth and nail in the past and it is not expected of them that they would not appear before the Assistant Collector 1st Grade had they been informed about the date of hearing. As it is clear from the record that petitioner No.1 was away to Canada with her husband from 15.04.2007 to 27.07.2007, the question of her personal service is impossible and as petitioners No.2 and 3 are not residents of village Dalla and are residing at Mumbai and Ludhiana respectively, the proclamation in the village is also inconsequential. There is no evidence also on record that the General Power of Attorney appointed by the petitioners were served in person.

Thus, in view of the aforesaid facts and circumstances, I am of the considered opinion that the proceedings carried out by the Assistant

CWP No.25223 of 2013

[5]

Collector 1st Grade *ex-parte* against the petitioners were wrong, therefore, the orders having been passed in appeal and revision by the higher authorities are patently illegal and erroneous.

Accordingly, the present writ petition is hereby allowed, impugned orders are set aside and the matter is remanded back to the Assistant Collector 1st Grade, Dasuya to start the partition proceedings *de-novo* after associating the petitioners.

The parties are directed to appear before the Assistant Collector 1st Grade, Dasuya on 01.12.2015.

October 30, 2015
vinod*

(Rakesh Kumar Jain)
Judge